

Machinery and equipment that is used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease is exempt from Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.330. (This is a GIL.)

June 3, 2008

Dear Xxxxx:

This letter is in response to your letter dated September 6, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

In your letter you have stated and made inquiry as follows:

I am writing to you today to request a private letter ruling concerning a part of our manufacturing process we feel falls within the guidelines for the machinery and equipment exemption, but is at the present time taxable.

I am talking about the case washer and related equipment for our plastic milk case used in the milk manufacturing process. The sanitized case is filled with fresh dairy products right off the production line and used for delivery to our customers. These cases come back from the customer (we hope) on our delivery trucks and trailers. The empty cases are normally stored outside in the rear of the grocery store. Here they are exposed to dirt, the elements, bird feces and the whims of passersby. They come back to us with discarded packaging, soda cans, sour milk products and anything else you can imagine pasted inside and outside of the milk case.

Many of our largest customers inspect our manufacturing facilities on a regular basis. If we did not ship their products to them in a sanitary milk case, we would lose the business in short-order. To accomplish this we spend about \$300,000 on a case washing system. This system inverts the case to dump out foreign material missed by workers, and then goes through the case washer, which uses chemicals and hot water to wash and rinse the cases. The sanitized milk case then goes directly into the production area to be filled with fresh dairy products. The cases of product are then mechanically stacked and go directly into the cooler to be loaded out for delivery.

We feel the case washer is definitely part of the production process and should be exempt from sales tax. I have enclosed the schematics for the new case washing system at our CITY, IL plant. If you would like, you are welcome to come to CITY and view the process. You might also speak with your INDIVIDUALS, they both have had a plant tour.

If you have any questions, please call me.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). The Department's Private Letter Ruling Committee has decided not to issue a private letter ruling on this issue because it believes the law is clear on this situation.

The manufacturing machinery and equipment exemption exempts from tax only machinery and equipment used primarily (over 50% of the time) in manufacturing or assembling tangible personal property for sale or lease. Thus, the use of machinery and equipment in any industrial, commercial or business activity which may be distinguished from manufacturing or assembling will not be an exempt use and such machinery and equipment will be subject to tax. See 86 Ill. Adm. Code 130.330.

The manufacturing process is the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating or refining which changes some existing material or materials into a material with a different form, use or name. These changes must result from the process in question and be substantial and significant.

The law requires that machinery and equipment be used primarily (over 50% of the time) in manufacturing or assembling of an article of tangible personal property for wholesale or retail sale or lease. The fact that particular machinery or equipment may be considered essential to the conduct of the business of manufacturing or assembling of tangible personal property because its use is required by law or practical necessity does not, by itself, mean that machinery or equipment is used primarily in manufacturing or assembling. For example, the use of machinery or equipment in managerial, sales, or other nonproduction or nonoperational activities, including disposal of waste, scrap or residue, inventory control, production scheduling, work routing, purchasing, receiving, accounting, fiscal management, general communications, plant security, sales, marketing, product exhibition and promotion, or personnel recruitment, selection or training does not qualify for the exemption.

It is our understanding that your Company retains ownership of the plastic milk cases. The plastic milk carriers are not being sold to the purchasers of your Company's milk product. If this is in fact the case, the case washer and related equipment do not appear to be used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters
Associate Counsel

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